



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

May 10, 2013

Jeff Civins
Haynes & Boone, LLP
600 Congress Avenue, Suite 1300
Austin, Texas 78701-3285

BY CERTIFIED MAIL, RRR # 7007 3020 0002 5102 8140

PREPARED FOR SETTLEMENT PURPOSES

**RE: CLEAN HARBORS EL DORADO, LLC
HAZARDOUS WASTE MANAGEMENT FACILITY, EL DORADO, ARKANSAS,
EPA ID NO. ARD069748192**

Dear Jeff:

I am writing on behalf of U.S. EPA Region 6 ("EPA") regarding the Clean Harbors—El Dorado, LLC facility referenced above (the "Facility"). As you know, EPA is preparing an administrative enforcement action to address RCRA violations identified in EPA's inspection of the Facility in November 2011, which concern Clean Harbors' management of saturator sludge and its compliance with requirements for carbon canisters used to control emissions from permitted hazardous waste storage tanks under 40 CFR Part 264 Subpart CC. As we have discussed, EPA is interested in providing an opportunity to settle this matter through a pre-filing settlement negotiation. Accordingly, I am attaching a draft proposed consent agreement and final order (the "draft CAFO"), which requires certain actions by Clean Harbors to comply with RCRA and payment of a civil administrative penalty. I am also enclosing a summary of the civil administrative penalty calculation proposed in the draft CAFO.

Section 3008(a) of RCRA authorizes EPA to collect civil administrative penalties of up to \$37,500 per day of violation to address the violations at the Facility and to issue an order requiring Clean Harbors to correct these violations and comply with applicable requirements. Please note that EPA has prepared the draft CAFO and attached penalty summary expressly for the purpose of facilitating a settlement negotiation, and these documents do not limit the violations that EPA may choose to allege, or the remedies that it may seek (including the scope of compliance requirements and the amount of penalties) if the matter is not resolved through settlement. EPA will allow a **thirty-day period from receipt of this letter** for Clean Harbors to consider settlement consistent with the terms of the attached CAFO and invites Clean Harbors to contact EPA for the purpose of negotiating a settlement.

Rather than review each violation in this letter, I would like to highlight a few items for your consideration. First of all, even though in the context of this enforcement matter Clean

Jeff Civins
May 10, 2013

Harbors has contested EPA's application of the derived from rule to the saturator sludge,¹ it has not addressed the fact that the sludge exhibits the toxicity characteristic. Clean Harbors' testing results, including results submitted in response to EPA's information request, show that the saturator sludge and brine exceed the maximum concentration of contaminants for the toxicity characteristic for one or more hazardous metals. Additionally, Clean Harbors' response to EPA's information request shows that Clean Harbors has not fully considered the extent to which the saturator brine, when used as a drilling fluid or make up water, may be lost to the environment. These uses regularly result in substantial loss to the environment. And, with respect to monitoring and maintenance of carbon canisters to control emissions of organic compounds from its permitted hazardous waste storage tanks, Clean Harbors' response to EPA's information request shows that in many instances Clean Harbors took months to replace spent carbon after monitoring indicated breakthrough.

We believe that the draft CAFO provides a reasonable approach to settlement of this matter, which involves substantial violations that continued over a period of years and potentially resulted in the disposal of hazardous waste into the environment and in the emission of organic compounds to the air. Please consider that the draft CAFO would provide flexibility to Clean Harbors that may not be available if the matter is determined by a hearing. For instance, under the draft CAFO as proposed, Clean Harbors could elect to continue to treat the saturator sludge in the Brine Unit on a conditional and interim basis while it obtains authorization for this activity under its RCRA permit. Also, note that EPA used conservative duration and gravity inputs to calculate the proposed settlement penalty amount, as well as using information provided by Clean Harbors to calculate the economic benefit of non-compliance, which includes avoided costs associated with disposal of the saturator sludge. In a complaint and hearing context, EPA can reasonably seek a substantially higher penalty amount, including higher gravity and economic benefit components, which would be consistent with the statutory daily penalty limit in section 3008 of RCRA and the RCRA Penalty Policy.

After you have had an opportunity to review and discuss this approach with your client, please let me know how you would like to proceed.

Sincerely,



Jonathan Bull

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 6

CC: Guy Tidmore, U.S. Environmental Protection Agency, Region 6
Enclosures

¹ The saturator sludge is a listed hazardous waste under the derived from rule. EPA has provided authority concerning application of the derived from rule to the saturator sludge.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

RCRA-06-2013-

2. As required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA provided notice of this action to the State of Arkansas before issuing this CAFO.

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations contained in this CAFO; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent explicitly waives any right to contest the allegations and any right to appeal the proposed Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. Respondent consents to the assessment of the civil penalty stated herein.

7. Respondent consents to the issuance of this CAFO, including any conditions stated herein and to the issuance of the compliance order contained in this CAFO.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. Under Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), a “person” is defined as “an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.”

9. Under Arkansas Pollution Control and Ecology Commission (“APCEC Reg. 23”) Section 260.10 [40 CFR § 260.10], a “person” is defined as “an individual, corporation, company, firm, partnership, association, trust, joint stock company, joint venture, state or federal

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION
In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

agency or instrumentality, county, city, town, or municipal authority, trust venture or any other legal entity, or combination of entities however organized.”

10. Under 40 CFR § 270.2, a “person” is described as “an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.”

11. Respondent is a Delaware limited liability company authorized to do business in the State of Arkansas.

12. Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Regulation No. 23 of the Arkansas Pollution Control and Ecology Commission (“APCEC Reg. 23”) Section 260.10 [40 CFR § 260.10] and 40 CFR § 270.2.

13. Under APCEC Reg. 23 § 260.10 [40 CFR § 260.10], “operator” means an individual or individuals charged with the responsibility of managing or operating a hazardous waste management facility, including the responsibility for assuring the operation of said facility is in accordance with the provisions of this hazardous waste management regulation.

14. Under APCEC Reg. 23 § 260.10 [40 CFR § 260.10], “owner” means the person who owns a facility or part of a facility.

15. Under 40 CFR § 270.2, “owner or operator” means “the owner or operator of any facility or activity subject to regulation under RCRA.”

16. Under APCEC Reg. 23 § 260.10 [40 CFR § 260.10], “facility” means: “(1) all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment,

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).”

17. Respondent owns and operates certain real property comprising more than 300 acres located at 309 American Circle in El Dorado, Union County, Arkansas and the structures, other appurtenances, and improvements on the property used for the treatment and storage of hazardous waste (the “Facility”).

18. Respondent’s operations at the Facility include the commercial storage and treatment, by incineration, of a wide variety of hazardous wastes received from offsite generators, including wastes listed as hazardous in APCEC Reg. 23 §§ 264.31 & 261.32 [40 CFR §§ 261.31 and 261.32].

19. Respondent also generates hazardous wastes as a result of the hazardous waste treatment activities it performs at the Facility.

20. The Facility identified in Paragraph 17 is a “facility” as that term is defined by APCEC Reg. 23 § 260.10 [40 CFR § 260.10].

21. Respondent is the “owner” and “operator,” as defined by APCEC Reg. 23 § 260.10 [40 CFR § 260.10] and 40 CFR § 270.2, of the Facility.

22. The Facility has been operated continuously as a commercial hazardous waste management facility since approximately 1980, when Respondent (then known as ENSCO, Inc. (“ENSCO”)) received interim status authorization under RCRA.

23. ENSCO operated the Facility under RCRA interim status authorization until receiving a final RCRA permit in 1988.

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

24. In 2001, ENSCO changed its name to Teris, LLC, and Arkansas Department of Environmental Quality (“ADEQ”) transferred RCRA Permit No. 10H to Teris, LLC (dba ENSCO).

25. In 2007, Teris, LLC changed its name to Clean Harbors El Dorado, LLC.

26. In March 2008, ADEQ issued RCRA Hazardous Waste Renewal Permit No. 10H-RN1 (the “RCRA Permit”) for the Facility to Clean Harbors El Dorado, LLC.

27. Respondent is authorized under its RCRA Permit to incinerate more than 500 types of wastes listed as hazardous in APCEC Reg. 23 §§ 264.31 & 261.32 [40 CFR §§ 261.31 and 261.32].

28. EPA conducted a RCRA compliance inspection of the Facility in May and June 2009 (the “2009 Inspection”).

29. During the 2009 Inspection, the EPA inspector evaluated hazardous waste storage, handling and incineration-related activities for compliance with Subtitle C of RCRA (RCRA Sections 3001-3023, 42 U.S.C. §§ 6921-6939e) and the requirements of Arkansas’ Authorized Program.

30. EPA prepared an inspection report of the 2009 Inspection in March 2010 (the “2009 Inspection Report”).

31. EPA conducted a RCRA compliance inspection of the Facility on November 1-4, 2011 (the “2011 Inspection”).

32. During the 2011 Inspection, the EPA inspector evaluated hazardous waste management operations for compliance with Subtitle C of RCRA (RCRA Sections 3001-3023, 42 U.S.C. §§ 6921-6939e) and the requirements of Arkansas' Authorized Program.

33. EPA prepared an inspection report of the 2011 Inspection in January 2012 (the "2011 Inspection Report").

B. VIOLATIONS

Count 1: Failure to Make a Hazardous Waste Determination (APCEC Reg. 23 § 262.11 [40 CFR § 262.11])

34. Under APCEC Reg. 23 § 262.11 [40 CFR § 262.11], a person who generates a solid waste, as defined in APCEC Reg. 23 § 261.2 [40 CFR § 261.2], must determine if that waste is a hazardous waste using the following method: (a) He should first determine if the waste is excluded from regulation under § 261.4. (b) He must then determine if the waste is listed as a hazardous waste in Subsection D of § 261. Note: Even if the waste is listed, the generator still has an opportunity under § 260.22 to demonstrate to the Director and the EPA Administrator that the waste from his particular facility or operation is not a hazardous waste. (c) For purposes of compliance with § 268, or if the waste is not listed in Subsection D of § 261, the generator must then determine whether the waste is identified in Subsection C of § 261 by either: (1) Testing the waste according to the methods set forth in Subsection C § 261, or according to an equivalent method approved by the Commission under § 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used. (d) If the waste is determined to be hazardous, the generator must refer to sections 261,

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION
In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

264, 265, 266, 267, 268, and 273 of this regulation for possible exclusions or restrictions pertaining to management of his specific waste.

35. Under APCEC Reg. 23 § 260.10 [40 CFR § 260.10], the term “generator” means “any person, by site, whose act or process produces hazardous waste identified or listed in Section 261 of this regulation or whose act first causes a hazardous waste to become subject to regulation.”

36. In the regular course of its commercial hazardous waste management operations at the Facility, Respondent generates solid waste as defined by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and APCEC Reg. 23 § 261.2 [40 CFR § 261.2].

37. Respondent is subject to regulations applicable to generators of solid and hazardous waste, including the requirement under APCEC Reg. 23 § 262.11 [40 CFR § 262.11] to make a hazardous waste determination for each solid waste generated by the Facility.

38. Respondent uses a system of air pollution control devices to treat exhaust generated by the Facility’s hazardous waste incinerator. In 2003, Respondent began operating a saturator (an air pollution control device) to treat exhaust from the Facility’s hazardous waste incinerator. The saturator cools and condenses the incinerator exhaust and generates waste sludge comprised of a mixture of liquids and solids (the “Saturator Sludge”).

39. APCEC Reg. 23 § 260.10 [40 CFR § 260.10] defines “sludge” as “any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.”

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

40. The Saturator Sludge is a “sludge” as defined by APCEC Reg. 23 § 260.10 [40 CFR § 260.10].

41. APCEC Reg. 23 § 260.10 [40 CFR § 260.10] defines “treatment” as “any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.”

42. Since 2003, Respondent has treated the Saturator Sludge in an area of the Facility called the “Brine Unit.” Treatment of the Saturator Sludge in the Brine Unit includes removal of solids by filtration, precipitation and removal of metals, and volume reduction by heating and evaporation. After it is treated in the Brine Unit, the Saturator Sludge is a concentrated calcium chloride brine (the “Saturator Brine”).

43. From 2003 through February 2012, Respondent sold the Saturator Brine for use as drilling fluid and make up water in oil and gas well drilling, completion and remediation applications. These applications involve the injection of drilling fluid and make up water into boreholes and wells without fully recovering them to the surface. Unrecovered drilling fluid and make up water enter the subsurface environment and may remain there indefinitely and uncontrolled.

44. Section 1004(3) of RCRA, 42 U.S.C. § 6903, defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

45. Use of the Saturator Brine as drilling fluid and make up water in oil and gas well drilling, completion and remediation applications is a use that applies the Saturator Brine to the land in a manner that constitutes disposal.

46. APCEC Reg. 23 § 261.2(a)(1)(A) [40 CFR § 261.2(a)(1)(A)] defines “solid waste” as “any discarded material that is not excluded by § 261.4(a) or that is not excluded by a variance granted under §§ 260.30 and 260.31.”

47. APCEC Reg. 23 § 261.2(a)(2) [40 CFR § 261.2(a)(2)] defines “discarded material” as “any material which is: (i) “[a]bandoned”, as explained in paragraph (b) of this section; or (ii) “[r]ecycled”, as explained in paragraph (c) of this section; (iii) [c]onsidered “inherently waste-like”, as explained in paragraph (d) of this section; or (iv) [a] “military munition” identified as a solid waste in § 266.202.

48. Under APCEC Reg. 23 § 261.2(b), “materials are solid waste if they are “abandoned” by being: (1) [d]isposed of; or (2) [b]urned or incinerated; or (3) [a]ccumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.”

49. Under APCEC Reg. 23 § 262(c) “materials are solid wastes if they are “recycled” -- or accumulated, stored, or treated before recycling -- as specified in paragraphs (c)(1) through (4) of this section.”

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION
In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

50. The Saturator Sludge is solid waste under APCEC Reg. 23 § 261.2 [40 CFR § 261.2].
51. The Saturator Sludge is “discarded material” as defined by APCEC Reg. 23 § 261.2(a)(2) [40 CFR § 261.2(a)(2)] and is not excluded from the definition of solid waste by APCEC Reg. 23 § 261.4(a) [40 CFR § 261.4(a)] or by a variance under APCEC Reg. 23 § 260.30 or § 260.31 [40 CFR § 260.30 or § 260.31].
52. Under APCEC Reg. 23 § 261.2(b) [40 CFR § 261.2(b)], the Saturator Sludge is solid waste because it is “abandoned” by being “treated” in the Brine Unit before being “disposed of.”
53. Under APCEC Reg. 23 § 261.2(c)(1) [40 CFR § 261.2(c)(1)], the Saturator Sludge is a solid waste when it is recycled and sold for use as an oil and gas well drilling fluid or make up water because it is recycled to make a product that is applied to or placed on the land in manner that constitutes disposal.
54. Under APCEC Reg. 23 § 261.2(e)(2) [40 CFR § 261.2(e)(2)], because the use or reuse of the Saturator Sludge to make oil and gas well drilling fluid or make up water is a use to make a product that is applied to the land or used in a manner constituting disposal, the Saturator Sludge is not excluded from the definition of solid waste by APCEC Reg. 23 § 261.2(e)(1) [40 CFR § 261.2(e)(1)].
55. Under APCEC Reg. 23 § 261.3(a) [40 CFR § 261.3(a)] a hazardous waste is a solid waste that exhibits any of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, or toxicity) identified in Subsection C of Section 261 (§§ 261.20-261.24), is a listed

hazardous waste under Subsection D of Section 261 (§§ 261.30-261.37), or is a mixture of a solid waste and one or more hazardous wastes.

56. Under the “derived from rule” in APCEC Reg. 23 § 261.3(c) [40 CFR § 261.3(c)], “[u]nless and until it meets the criteria of paragraph (d) of this section: (1) A hazardous waste will remain a hazardous waste. (2)(i) Except as otherwise provided in paragraph (c)(2)(ii), (g) or (h) of this subsection, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.).”

57. Under APCEC Reg. 23 § 261.24 [40 CFR § 261.24], “(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section. (b) A solid waste that exhibits the characteristic of

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

toxicity has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.”

58. The Saturator Sludge is a solid waste generated from the treatment, by incineration, of a wide variety of listed and characteristic hazardous wastes. It is a listed hazardous waste under the “derived-from rule” in APCEC Reg. 23 § 261.3(c) [40 CFR § 261.3(c)], and it exceeds the maximum concentration of contaminants for the toxicity characteristic as provided in Table 1 of APCEC Reg. 23 § 261.24(b) [40 CFR § 261.24(b)] for one or more contaminants, including arsenic, barium, cadmium, lead and mercury.

59. Respondent has failed to make a hazardous waste determination of the Saturator Sludge as required by APCEC Reg. 23 § 262.11 [40 CFR § 262.11].

60. Therefore, Respondent has violated APCEC Reg. 23 § 262.11 [40 CFR § 262.11].

Count 2: Unpermitted Hazardous Waste Storage and Treatment in the Brine Unit (RCRA Section 3005(a), APCEC Reg. 23 § 270.1 [40 CFR § 270.1])

61. As the owner and operator of the Facility, a commercial hazardous waste treatment, storage and disposal facility, Respondent is subject to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

62. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), requires the owner or operator of a hazardous waste treatment, storage or disposal facility to obtain a RCRA Permit authorizing the hazardous waste treatment, storage or disposal activities it performs at the facility. Treatment, storage or disposal of hazardous waste is prohibited except in accordance with the facility’s RCRA Permit.

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

63. APCEC Reg. 23 § 270.1(c) [40 CFR § 270.1(c)] provides, in part: “RCRA requires a permit for the “treatment,” “storage” and “disposal” of any “hazardous waste” as identified or listed in 40 CFR Part 261. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. . . .”

64. The Saturator Sludge is a solid waste as defined by APCEC Reg. 23 § 261.2 [40 CFR § 261.2] and a hazardous waste as defined by APCEC Reg. 23 § 261.3 [40 CFR § 261.3].

65. Respondent’s operation of the Brine Unit involves treatment of the Saturator Sludge in one or more hazardous waste management units.

66. Hazardous waste treatment activities in the Brine Unit include the use of tanks, presses and other equipment to remove solids and some of the toxic metals from the Saturator Sludge by processes including filtration and precipitation, and to reduce the volume of the Saturator Sludge by processes including heating and evaporation.

67. Under RCRA § 3005(a), 42 U.S.C. § 6925(a), and APCEC Reg. 23 § 270.1(c) [40 CFR § 270.1(c)], Respondent’s operation of the Brine Unit to conduct treatment of the Saturator Sludge requires authorization under a RCRA permit.

68. Under Module I.A. of Respondent’s RCRA Permit, “[a]ny storage/ treatment/ disposal of hazardous waste which requires a permit and which is not specifically authorized in this Permit is prohibited.”

69. Respondent did not apply for or obtain authorization under its RCRA Permit to treat hazardous waste in the Brine Unit.

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

70. Since approximately 2003, Respondent has stored and treated Saturator Sludge in tanks and equipment in the Brine Unit without authorization under its RCRA Permit.

71. Therefore, Respondent has violated RCRA § 3005(a), 42 U.S.C. § 6925(a), and APCEC Reg. 23 § 270.1(c) [40 CFR § 270.1(c)].

Count 3: Failure to Comply with RCRA Tank Standards in the Brine Unit (APCEC Reg. 23 Section 264 Subsection J [40 CFR Part 264 Subpart J])

72. APCEC Section 264 Subsection J (§§ 264.190-264.200) [40 CFR Part 264 Subpart J (§§ 264.190-264.200)] provides requirements applicable to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided by APCEC Reg. 23 §§ 264.190(a-c) or 264.1.

73. Respondent uses tank systems to treat Saturator Sludge in the Brine Unit at the Facility which are not excepted from the requirements of APCEC Section 264 Subsection J by APCEC Reg. 23 §§ 264.190 (a-c) or 264.1.

74. As the owner and operator of the Facility, Respondent's operation of tank systems to treat Saturator Sludge in the Brine Unit is subject to the requirements in APCEC Section 264 Subsection J [40 CFR Part 264 Subpart J].

75. Since it began operating the Brine Unit, Respondent has operated hazardous waste treatment tanks in the Brine Unit out of compliance with applicable requirements of APCEC Reg. 23 Section 264 Subsection J [40 CFR Part 264 Subpart J].

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

76. Under APCEC Reg. 23 § 264.194(a) [40 CFR § 264.194(a)], [h]azardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

77. Respondent has allowed corrosive liquids associated with treatment of the Saturator Sludge hazardous waste in tanks in the Brine Unit to corrode metal components of the Brine Unit.

78. Under APCEC Reg. 23 § 264.194(b) [40 CFR § 264.194(b)], the “owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum: (1) Spill prevention controls (e.g., check valves, dry disconnect couplings); (2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and (3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

79. Respondent has failed to use appropriate practices to prevent spills and overflows from hazardous waste treatment tanks in the Brine Unit. Respondent has failed to use appropriate spill prevention and overfill prevention controls on its hazardous waste treatment tanks in the Brine unit and has failed to prevent overtopping with respect to an open-top tank in the brine unit referred to as the “Hot Well.”

80. Under APCEC Reg. 23 § 264.197(c) [40 CFR § 264.197(c)], “[i]f an owner or operator has a tank system that does not have secondary containment that meets the requirements of § 264.193 (b) through (f) and has not been granted a variance from the secondary containment

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

requirements in accordance with § 264.193(g), then: (1) The closure plan for the tank system must include both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section. (2) A contingent post-closure plan for complying with paragraph (b) of this section must be prepared and submitted as part of the permit application. (3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under paragraph (a) of this section. (4) Financial assurance must be based on the cost estimates in paragraph (c)(3) of this section. (5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under Subsections G and H of this section.”

81. Respondent treats hazardous waste Saturator Sludge in tanks in the Brine Unit without adequate secondary containment and that have not been granted a variance from the secondary containment requirements.

82. Respondent has failed to account for the cost of closure of hazardous waste treatment tanks in the Brine Unit in its closure plan and has not complied with financial assurance requirements for closure of hazardous waste treatment tanks in the Brine Unit.

83. Therefore, Respondent has violated APCEC Reg. 23 Section 264 Subsection J [40 CFR Part 264 Subpart J].

Count 4: Failure to Comply with Land Disposal Restrictions (APCEC Reg. 23 Section 268 Subsection A [40 CFR Part 268 Subpart A])

84. APCEC Reg. 23 Section 268 [40 CFR Part 268] restricts land disposal of certain hazardous wastes and provides requirements with respect to land disposal that apply to hazardous waste generators, treaters, and disposal facilities.

85. Respondent is required to comply with requirements for generator and treatment facilities in APCEC Reg. 23 Section 268 Subsection A [40 CFR Part 268 Subpart A] with respect to its management of the Saturator Sludge and the Saturator Brine.

86. APCEC Reg. 23 § 268.2(c) [40 CFR § 268.2(c)] defines “land disposal” as placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

87. Use of the Saturator Sludge to make an oil and gas well drilling fluid or make up water results in “land disposal” as defined by APCEC Reg. 23 § 268.2(c) [40 CFR § 268.2(c)].

88. APCEC Reg. 23 § 268.7(a)(1) [40 CFR § 268.7(a)(1)] requires a generator of hazardous waste to determine if the waste must be treated before it can be land disposed by determining if the hazardous waste meets the treatment standards for land disposal in APCEC Reg. 23 §§ 268.40, 268.45, or 268.49 [40 CFR §§ 268.40, 268.45, or 268.49].

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

89. Respondent has failed to determine if the Saturator Brine or the Saturator Sludge must be treated before land disposal. Therefore, Respondent has violated APCEC Reg. 23 § 268.7(a)(1) [40 CFR § 268.7(a)(1)].

90. APCEC Reg. 23 § 268.7(a)(8) [40 CFR § 268.7(a)(8)] requires generators to “retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. . . .”

91. Respondent has failed to generate or maintain records required by APCEC Reg. 23 § 268.7(a)(8) [40 CFR § 268.7(a)(8)], including determinations of whether the Saturator Sludge or Saturator Brine meet applicable land disposal treatment standards. Therefore, Respondent has violated APCEC Reg. 23 § 268.7(a)(8) [40 CFR § 268.7(a)(8)].

92. APCEC Reg. 23 § 268.7(b)(1&2) [40 CFR § 268.7(b)(1&2)] requires a treatment facility to determine if its hazardous waste must be treated before it can be land disposed by determining if the hazardous waste meets the treatment standards for land disposal.

93. Respondent failed to determine if the Saturator Brine must be treated before land disposal. Therefore, Respondent has violated APCEC Reg. 23 § 268.7(b)(1&2) [40 CFR § 268.7(b)(1&2)].

94. APCEC Reg. 23 § 268.7(b)(3&4) [40 CFR § 268.7(b)(3&4)], require treatment facilities to provide an initial land disposal restriction (“LDR”) notification and certification

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

when sending waste to a land disposal facility and to keep a copy of the notification and certification in the treatment facility's file.

95. Since it began operating the Brine Unit in 2003, Respondent has failed to provide the required LDR notification and certification to parties purchasing or using the Saturator Brine. Therefore, Respondent has violated APCEC Reg. 23 § 268.7(b)(3&4) [40 CFR § 268.7(b)(3&4)].

Count 5: Failure to Comply with Air Emission Standards for Permitted Hazardous Waste Tanks (APCEC Reg. 23 Section 264 Subsection CC [40 CFR Part 264 Subpart CC])

96. At the Facility, Respondent treats, stores or disposes of hazardous waste that contains at least 10 percent organic compounds and has a volatile organic content of greater than 500 parts per million by weight.

97. As the owner and operator of the Facility, and under Module II.R-1 of its RCRA Permit, Respondent is required to comply with APCEC Reg. 23 Section 264 Subsection CC (§§ 264.1080-1090) [40 CFR Part 264 Subpart CC (§§ 264.1080-1090)] governing air emissions from tanks, surface impoundments and containers, with respect to its storage and treatment of hazardous waste in tanks at the Facility.

98. APCEC Reg. 23 § 264.1084 [40 CFR § 264.1084] provides standards that apply to the control of air pollutant emissions from hazardous waste storage and treatment tanks.

99. Respondent is required, under APCEC Reg. 23 § 264.1084(b)(2) [40 CFR § 264.1084], to control air pollutant emissions from its permitted hazardous waste storage tanks by

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

using Tank Level 2 controls in accordance with APCEC Reg. 23 § 264.1084(d) [40 CFR § 264.1084(d)].

100. Under APCEC Reg. 23 § 264.1084(d)(3) [40 CFR § 264.1084(d)(3)], “[o]wners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks: . . . (3) [a] tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section.”

101. Under APCEC Reg. 23 § 264.1084(g)(1)(iv) [40 CFR § 264.1084(g)(1)(iv)], “a closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1087 of this subsection.”

102. Under APCEC Reg. 23 § 264.1084(g)(3)(ii) [40 CFR § 264.1084(g)(3)(ii)], “[t]he owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures: . . . (ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 264.1087 of this subsection.”

103. APCEC Reg. 23 § 264.1087 provides requirements applicable to each closed-vent system and control device used to control air emissions in accordance with Subsection CC.

104. Under APCEC Reg. 23 § 264.1087(c)(1), the control device shall meet the following requirements: (1) the control device shall be one of the following devices: (i) [a] control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight; (ii) [a]n enclosed combustion device designed and operated in accordance with the requirements of § 264.1033(c) of this part;

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

or (iii) [a] flare designed and operated in accordance with the requirements of § 264.1033(d) of this part.

105. Respondent uses carbon adsorption systems (“carbon canisters”) installed on its permitted hazardous waste storage and treatment tanks as a control device to comply with APCEC Reg. 23 § 264.1087(c)(1) [40 CFR § 264.1087(1)].

106. Under APCEC Reg. 23 § 264.1087(c)(3)(i) [40 CFR § 264.1087(c)(3)(i)], the “owner or operator using a carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements: (i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of § 264.1033(g) or § 264.1033(h) of this part.”

107. APCEC Reg. 23 § 264.1033(h)(1) [40 CFR § 264.1033(h)] provides requirements applicable to carbon canisters that do not regenerate the carbon bed directly onsite in the control device.

108. The carbon canisters Respondent uses do not regenerate the carbon bed directly onsite in the control device.

109. Under APCEC Reg. 23 § 264.1033(h) [40 CFR § 264.1033(h)] , “[a]n owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures: (1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of § 264.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of § 264.1035(b)(4)(iii)(G).”

110. From at least 2009 until February 2013, Respondent failed to replace the existing carbon in its carbon canisters with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of APCEC Reg. 23 § 264.1035(b)(4)(iii)(G) [40 CFR § 264.1035(b)(4)(iii)(G)].

111. From at least 2009 until February 2013, Respondent failed to monitor carbon canisters on one or more of its permitted hazardous waste storage tanks daily or at a frequency no greater than 20% of the time required to consume the total carbon working capacity of the canister established as a requirement of APCEC Reg. 23 § 264.1035(b)(4)(iii)(G) [40 CFR § 264.1035(b)(4)(iii)(G)].

112. From at least 2009 through 2011, Respondent failed to replace spent carbon with fresh carbon in its carbon canisters immediately when monitoring results indicated carbon breakthrough had occurred.

113. Therefore, Respondent has violated APCEC Reg. 23 §§ 264.1087(c)(3)(i) & 264.1033(h) [40 CFR §§ 264.1087(c)(3)(i) & 264.1033(h)].

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

114. In February 2013, Respondent began monitoring carbon canisters on each of its permitted hazardous waste storage tanks daily.

III. TERMS OF SETTLEMENT

A. COMPLIANCE WITH RCRA

115. No later than the effective date of this CAFO, Respondent shall cease selling the Saturator Brine as a commercial calcium chloride brine for uses that apply the Saturator Brine to the land or that constitute disposal, including use as a well drilling fluid, make up water, or as a well fracking fluid.

116. No later than the effective date of this CAFO, Respondent shall either: (1) cease all treatment, including evaporation, of Saturator Sludge or other hazardous waste in the Brine Unit without authorization under its RCRA Permit; or (2) notify EPA in writing that Respondent elects to continue to operate the Brine Unit for treatment of the Saturator Sludge on a conditional and temporary basis while it obtains permit authorization, in which case Respondent must also meet the following requirements: (a) within thirty (30) days of the effective date of this Order, Respondent shall submit an application to ADEQ for authorization under Respondent's RCRA Permit to conduct treatment of Saturator Sludge, or other hazardous wastes, in the Brine Unit; (b) Respondent shall obtain authorization under its RCRA Permit for treatment of Saturator Sludge or other hazardous wastes in the Brine Unit within one (1) year from the effective date of this Order; and (c) Respondent must demonstrate to EPA that all hazardous waste treatment conducted in the Brine Unit after the effective date of this Order complies with applicable RCRA

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION
In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

requirements, including APCEC Reg. 23 Section 264 Subsections J, AA, BB and CC [40 CFR Part 264 Subparts J, AA, BB and CC].

117. No later than thirty (30) days from the effective date of this CAFO, and continuing thereafter, Respondent shall comply with hazardous waste determination requirements in APCEC Reg. 23 § 262.11 [40 CFR § 262.11] with respect to the Saturator Sludge.

118. No later than thirty (30) days from the effective date of this CAFO, Respondent shall provide EPA with a plan to comply with hazardous waste management requirements in APCEC Reg. 23 Sections 261, 264, 265, 266, 267, 268, and 273 [40 CFR Parts 261, 264, 265, 266, 267, 268, and 273] with respect to its management of the Saturator Sludge.

119. Upon the effective date of this CAFO and continuing thereafter, Respondent shall comply with APCEC Reg. 23 Section 264 Subsection CC [40 CFR Part 264 Subpart CC], as applicable to the hazardous waste storage and treatment tanks at the Facility that are authorized by Module IV of its RCRA Permit. Respondent shall monitor carbon canisters used for this purpose daily and may modify the monitoring frequency if it demonstrates to EPA an acceptable alternative monitoring frequency and EPA has issued written approval of the proposed monitoring frequency. Alternatively, Respondent may route these affected units to the secondary combustion chamber through improved engineering controls.

120. Respondent shall send all documents required by this CAFO to:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

B. CIVIL PENALTY

121. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and having considered those factors set forth in Section 3008(a)(3) of RCRA, 42 USC § 6928(a)(3), and the June 2003 RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts to comply with the applicable requirements, the extent of deviation from the statutory or regulatory requirements, the duration of the violations, any economic benefit derived from the non-compliance, and Respondent's compliance history, Respondent is assessed a civil penalty in the amount of **Six Million, Nine Hundred Ten Thousand, Five Hundred and Forty Nine Dollars (\$6,910,549).**

122. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

PLEASE NOTE: Docket number RCRA-06-2013-_____ shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

And to:

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

123. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

124. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

125. Pursuant to 31 U.S.C. § 3717 and 40 CFR § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 CFR § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 CFR § 13.11(b).

126. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 CFR § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

C. PARTIES BOUND

127. The provisions of this CAFO shall be binding on the parties to this action, their officers, directors, employees, agents, servants, authorized representatives, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

D. MODIFICATION

128. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-_____

of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

129. EPA does not waive any rights or remedies available to it for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions. This CAFO shall not be construed to limit the rights of EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

130. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

131. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

132. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of RCRA or applicable regulations including APCEC Reg. 23.

F. COSTS AND ATTORNEY FEES

133. Each party shall bear its own costs and attorney's fees.

G. EFFECTIVE DATE

134. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION
In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: _____

Clean Harbors El Dorado, LLC

FOR THE COMPLAINANT:

Date: _____

John Blevins
Director
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION

In the Matter of Clean Harbors El Dorado, LLC

EPA Docket Number RCRA-06-2013-

IV. FINAL ORDER

Pursuant to section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is hereby ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 CFR § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated _____

Patrick Rankin
Regional Judicial Officer
U.S. EPA Region 6

DRAFT / PREPARED FOR
SETTLEMENT NEGOTIATION
In the Matter of Clean Harbors El Dorado, LLC
EPA Docket Number RCRA-06-2013-_____

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2013, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # _____

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801
Registered Agent for Clean Harbors El Dorado, LLC

Date: _____

U.S. EPA, Region 6
Dallas, Texas

PREPARED FOR SETTLEMENT PURPOSES

Clean Harbors El Dorado

309 American Circle
El, Dorado, AR 71730
EPA-ID# ARD069748192

Penalty Worksheet - RCRA Docket Number

Count	Gravity	Regulation	Multi/Single	Penalty/Count
One	Major/Major	§262.11	Multi-Day	\$ 4,591,574.00
Two	Major/Major	RCRA § 3005(a), §270.10	Multi-Day	\$ -
Three	Major/Major	§264.190, §264.1084	Multi-Day	\$ 765,900.00
Four	Min/Major	§268 Subsection A	Multi-Day	\$ -
Five	Major/Major	§264 Subsection CC, §270.10	Multi-Day	\$ 1,553,075.00
Total:				\$ 6,910,549.00
BEN				\$ 3,038,499.00
GRAVITY				\$ 3,872,050.00

PREPARED FOR SETTLEMENT PURPOSES

Clean Harbors El Dorado

309 American Circle
El, Dorado, AR 71730
EPA-ID# ARD069748192

Penalty Worksheet - RCRA Docket Number:

Count One: *Failure to make an accurate HW determination pursuant to Sections 3002(a), 42 U.S.C. §§ 6922(a), APC&EC Reg 23 §262.11 [40 C.F.R. § 262.11]*

1	Penalty from Gravity Matrix	\$ 4,255.00		Major/Major
2	Number of Days	365		Multi-Day
3	Gravity Penalty =		\$ 1,553,075.00	
4	Number of Years	1		
5	Line 3 multiplied by Line 4		\$ 1,553,075.00	
6	Percent increase/decrease for good faith		0	
7	Percent increase for willfulness/negligence		0	
8	Percent increase for history of noncompliance		0	
9	Total Percent Lines 6 thru 8		0	
10	Multiply Line 5 by line 9		\$ -	
11	Calculated Economic Benefit		\$ 3,038,499.00	
12	Total Penalty (Add Lines 5, 10 and 11)		\$ 4,591,574.00	

PREPARED FOR SETTLEMENT PURPOSES

Clean Harbors El Dorado

309 American Circle
El Dorado, AR 71730
EPA-ID# ARD069748192

Penalty Worksheet - RCRA Docket Number:

Count Two *Unpermitted Hazardous Waste Storage & Treatment / Failure to Modify Permit*
Application Pursuant to RCRA Section 3005, 42 U.S.C. §§ 6925, APC&EC Reg 23 §270.10 [40
C.F.R. §270.10]

			Major/Major Multi-Day
1 Penalty from multi-day Matrix			
2 Number of Days	1		
3 Multi-Day Penalty =		\$ -	
4 Number of Years	1		
5 Line 3 multiplied by Line 4		\$ -	
6 Percent increase/decrease for good faith		0	
7 Percent increase for willfulness/negligence		0	
8 Percent increase for history of noncompliance		0	
9 Total Percent Lines 6 thru 8		0	
10 Multiply Line 5 by line 9		\$ -	
11 Calculated Economic Benefit		0	
12 Total Penalty (Add Lines 5, 10 and 11)		\$ -	

PREPARED FOR SETTLEMENT PURPOSES

Clean Harbors El Dorado

309 American Circle
El, Dorado, AR 71730
EPA-ID# ARD069748192

Penalty Worksheet - RCRA Docket Number:

Count Three: *Failure to meet RCRA Tank Standards Pursuant to Sections 3004(n), 42 U.S.C. §§ 6924(n), APC&EC Reg 23 §§264.190-264.200 [40 C.F.R. §§ 264.190264.200]*

1	Penalty from multi-day Matrix	\$ 4,255.00	Major/Major
2	Number of Days	180	Multi-Day
3	Multi-Day Penalty =	\$ 765,900.00	
4	Number of Years	1	
5	Line 3 multiplied by Line 4	<u>\$ 765,900.00</u>	
6	Percent increase/decrease for good faith	0	
7	Percent increase for willfulness/negligence	0	
8	Percent increase for history of noncompliance	0	
9	Total Percent Lines 6 thru 8	0	
10	Multiply Line 5 by line 9	<u>\$ -</u>	
11	Calculated Economic Benefit	0	
12	Total Penalty (Add Lines 5, 10 and 11)	<u>\$ 765,900.00</u>	

PREPARED FOR SETTLEMENT PURPOSES

Clean Harbors El Dorado

309 American Circle
El, Dorado, AR 71730
EPA-ID# ARD069748192

Penalty Worksheet - RCRA Docket Number:

Count Four: *Failure to Meet Land Disposal Restrictions* pursuant to 3004(d), 42 U.S.C. §§ 6924(d), APC&EC Reg 23 §268 Subsection A [40 C.F.R. §268 Subpart A]

1	Penalty from Gravity Matrix			Min/Major
2	Number of Days	365		Multi-Day
3	Gravity Penalty =		\$ -	
4	Number of Years	1		
5	Line 3 multiplied by Line 4		\$ -	
6	Percent increase/decrease for good faith		0	
7	Percent increase for willfulness/negligence		0	
8	Percent increase for history of noncompliance		0	
9	Total Percent Lines 6 thru 8		0	
10	Multiply Line 5 by line 9		\$ -	
11	Calculated Economic Benefit		\$ -	
12	Total Penalty (Add Lines 5, 10 and 11)		\$ -	

PREPARED FOR SETTLEMENT PURPOSES

Clean Harbors El Dorado

309 American Circle
El, Dorado, AR 71730
EPA-ID# ARD069748192

Penalty Worksheet - RCRA Docket Number:

Count Five: *Failure to maintain air compliance on HW Tanks (Subpart CC and permit conditions) :*
Pursuant to Sections 3004(n), 42 U.S.C. §§ 6924(n), APC&EC Reg 23 Section 264 Subsection CC
(§§ 264.1080-264.1090) [40 C.F.R. Part 264 Subpart CC (§§ 264.1080-264.1090)] and Section
3005(a), 42 U.S.C. §§ 6925(a), APC&EC Reg 23 §270.1 [40 C.F.R. §270.1]

1	Penalty from multi-day Matrix	\$ 4,255.00		Major/Major
2	Number of Days	365		Multi-Day
3	Multi-Day Penalty =		\$ 1,553,075.00	
4	Number of Years	1		
5	Line 3 multiplied by Line 4		<u>\$ 1,553,075.00</u>	
6	Percent increase/decrease for good faith		0	
7	Percent increase for willfulness/negligence		0	
8	Percent increase for history of noncompliance		0	
9	Total Percent Lines 6 thru 8		0	
10	Multiply Line 5 by line 9		<u>\$ -</u>	
11	Calculated Economic Benefit			
12	Total Penalty (Add Lines 5, 10 and 11)		<u>\$ 1,553,075.00</u>	